

Public

May 19, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sergy Gabinsky, M.D.
#66604-054
FCI Otisville
P.O. Box 1000
Otisville, New York 10963

David W. Quist, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Sergey Gabinsky, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-130) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the

Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

[Redacted]
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER
OF
SERGEY GABINSKY, M.D.
CO-13-09-4868-A

DETERMINATION
AND
ORDER
BPMC #14-130

A hearing was held on April 23, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Referral Proceeding and Statement of Charges all dated February 12, 2014, were served upon the Respondent, Sergey Gabinsky, M.D. Pursuant to Section 230(10)(e) of the Public Health Law, Thea Graves Pellman, Chairperson, Leland Deane, M.D., M.B.A., and Michael J. Reichgott, M.D., Ph.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Christine C. Traskos, Esq. Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by James Dering, Esq., General Counsel, by David W. Quist, Esq. of Counsel. The Respondent did not appear and was not represented by counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This proceeding was brought pursuant to Public Health Law Section 230(10). The statute provides for an expedited hearing when a licensee is charged with a violation of

Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In this case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a).

Copies of the Notice of Hearing and the Statement of Charges are attached to this Determination and Order as Appendix I.

WITNESSES

For the Petitioner: None

For the Respondent: None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." or transcript page numbers ("T."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Sergey Gabinsky, M.D., the Respondent did not appear although he was duly served. (Petitioner's Ex. 2)

2. Sergey Gablinsky, M.D. the Respondent, was authorized to practice medicine in New York State on June 30, 1995 by the issuance of license number 199910 by the New York State Education Department. (Petitioner's Ex. 3)

3. On February 5, 2013, in the United States District Court, for the Southern District of New York, Respondent pled guilty to Conspiracy to Commit Health Care Fraud (in violation of 18 USC 371), a federal felony. On the same date, Respondent entered into a Consent Order of Forfeiture/Money Judgment in the amount of approximately \$2,000,000, representing the amount of gross proceeds obtained as a result of the criminal activity to which Respondent pled guilty. On September 6, 2013, Respondent was sentenced to a term of 24 months imprisonment with a recommendation that Respondent participate in a residential alcohol treatment program, that Respondent's imprisonment be followed by supervised release for a period of three years subject to conditions, and that Respondent be required to pay a \$100 assessment and approximately \$2,000,000 in restitution. (Petitioner's Ex.4)

VOTE OF THE HEARING COMMITTEE

SPECIFICATION OF MISCONDUCT

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of an act constituting a crime under federal law.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing and offered nothing in the way of mitigation. Respondent was convicted of setting up a corporation in Brooklyn, New York to fraudulently bill no-fault insurance claims to automobile insurance companies. Respondent received unlawful pecuniary benefits for medical care that was not provided to patients. He also abused the public trust that was placed in him as a physician licensed by the State of New York. The Hearing Committee finds no evidence of remorse on part of the Respondent or any indication that his future behavior would change for the better. As a result, the Hearing Committee deems revocation as the only penalty that will protect the people of New York State against this type of misconduct. This determination was reached after due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interest of justice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is SUSTAINED:
2. Respondent's license to practice medicine in New York State is hereby REVOKED:
3. This Order shall be effective upon service on the Respondent by personal service or registered or certified mail in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: West Hempstead, New York

May 16, 2014


Thea Graves Pellman
Chairperson

Leland Deane, M.D., M.B.A.
Michael J. Reichgott, M.D., Ph.D.

TO:

Sergey Gabinsky, M.D. #66604-054
FCI Otisville
P.O. Box 1000
Otisville, NY 10963

David W. Quist, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Coming Tower- Rm. 2512
Empire State Plaza
Albany, NY 12237

APPENDIX I

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

SERGEY GABINSKY, M.D.
CO-13-09-4868-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

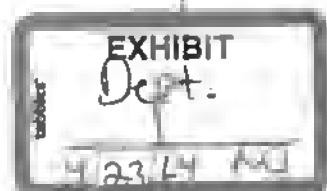
TO: Sergey Gabinsky, #66604-054
FCI Otisville
PO Box 1000
Otisville, NY 10963

The undersigned, Nirav R. Shah, M.D., M.P.H., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that **SERGEY GABINSKY, M.D.**, Respondent, New York license number 199910, has pleaded guilty to committing an act constituting a felony under federal law; as is more fully set forth in the Statement of Charges attached hereto, and made a part hereof.

It is, therefore

ORDERED, pursuant to New York Public Health Law §230(12)(b), that effective immediately, **SERGEY GABINSKY, M.D.**, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine.

ANY PRACTICE OF MEDICINE IN VIOLATION OF THIS COMMISSIONER'S ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY, DEFINED BY NEW YORK EDUCATION LAW §6512.



PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 23rd day of April, 2014, at 10:30 a.m., at Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204-2719, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct. Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. Respondent shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. The licensee may file a brief and affidavits with the Committee on Professional Conduct. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge, a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of

Adjudication, Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204-2719, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
Feb 12 2014

NIRAV R SHAH, M.D., M.P.H
Commissioner of Health
New York State Department of Health

Inquiries should be addressed to

David W. Oust
Associate Attorney
Bureau of Professional Medical Conduct
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

IN THE MATTER

OF

SERGEY GABINSKY, M.D.

STATEMENT
OF
CHARGES

SERGEY GABINSKY, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 30, 1995, by the issuance of license number 199910 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 5, 2013 in the United States District Court for the Southern District of New York, Respondent pled guilty to Conspiracy to Commit Health Care Fraud (in violation of 18 USC 371), a federal felony. On or about the same date, Respondent entered into a Consent Order of Forfeiture/Money Judgment in the amount of approximately \$2,000,000, representing the amount of gross proceeds obtained as a result of the criminal activity to which Respondent pled guilty. On or about September 6, 2013, Respondent was sentenced to a term of 24-months imprisonment with a recommendation that Respondent participate in a residential alcohol treatment program that Respondent's imprisonment be followed by supervised release for a period of three years subject to conditions and that Respondent be required to pay a \$100 assessment and approximately \$2,000,000 in restitution.

SPECIFICATION OF CHARGES
CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts in Paragraph A.

DATE: February 12, 2014
Albany, New York

Michael A. Hiser
Deputy Counsel
Bureau of Professional Medical Conduct